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STATUTORY RESTRICTIONS ON THE POWER OF COURTS TO PUNISH FOR CONTEMPT.

In a case decided by the Supreme Court of Missouri recently, *State v. Shepherd*, 76 S. W. 79, an editor was fined for contempt for publishing an article accusing the court of corruption. This charge was made in connection with a case in which a motion for rehearing was then pending before the court. The statutes of Missouri, however, attempt to expressly define and limit the powers of courts in dealing with contempts, providing that "every court of record shall have power to punish, as for contempt, persons guilty of any of the following acts and no other," following which is an enumeration of five classes of acts which can, under no construction, include newspaper publications. In an interesting criticism the American Law Review (Sept.-Oct., 1903,) vigorously excepts to the action of the court as overriding that sovereignty which may properly be predicated of the legislature, and hence as "absolutely illegal and subversive of our free institutions."

Putting aside, however, all questions of the expediency of the exercise of its powers by the court in this case, ample authority supports the Missouri court. It has assumed an inherent constitutional right to punish contempts; a right not susceptible of abridgment even by legislative enactment. This assumption is sustained by *State v. Morrill*, 16 Ark. 384, in which the statute rejected by the

court as not binding upon it was substantially identical with that involved in the present case. See also *Little v. State*, 90 Ind. 338; *Hale v. State*, 55 Ohio St., 210; *Hawes v. State*, 46 Neb. 149. "That it is not competent for the legislature to abridge the powers of courts to punish summarily such wrongful acts as obstruct the administration of justice has been held in well-considered cases. The conclusion is a necessary inference from the very numerous cases in which it has been held that the power inheres in courts independently of legislative authority. A power which the legislature does not give, it cannot take away. If power, distinguished from jurisdiction, exists independently of legislation, it will continue to exist notwithstanding legislation." *Hale v. State*, *supra*. The Supreme Court of the United States has expressed doubt as to whether an act of Congress limiting the powers of the United States courts to punish for contempt would be binding upon it, while at the same time deciding that the act was binding upon the lower courts which were themselves created by Congress. *Ex parte Robinson*, 19 Wall. 505. The only case maintaining the opposite view seems to be *In re Oldham*, 89 N. C. 23, where handbills containing an account of a case were given to a juror summoned to serve at a term of court at which the case was to come up for trial. It was held that the statute was operative in confining contempts to the acts specified.

While the power of the legislature to abridge is thus almost universally denied, it is acknowledged that it may regulate the methods of procedure, and that such regulations will be binding. *Wyatt v. People*, 17 Colo. 252; *In re Shortridge*, 99 Cal. 526.

WILL EQUITY ENFORCE A FORFEITURE?

Until within a few years it has been universally held by courts of equity that no principle was more firmly established than this, that Equity will never lend its aid actively to enforce a forfeiture. Story says, "It is a universal rule in equity, never to enforce a forfeiture." 2 *Story Eq. Jur.*, section 1319. In 1 *Pom. Eq. Jur.* section 459, 460 it is stated that, "It is a well-settled and familiar doctrine that a court of equity will not enforce a forfeiture. The few apparent exceptions to this doctrine are not real exceptions, since they all depend upon other rules and principles. * * * There are, in fact, no exceptions to this doctrine; those which appear to be exceptions, are not so in reality." See also 2 *Beach Eq. Jur.* 1013. Very recently, however, certain courts, and following them the textbook authors, have apparently concluded that the rule has been too broadly expressed, and have introduced certain exceptions which appear to be not merely apparent but real. Thus Mr. Bispham says: "In some cases, however, the enforcement of a forfeiture may be regarded in equity with favor." *Bisp. Eq.* section 181 (6th ed.); citing *Brown v. Vandergrift*, 80 Pa. St. 142 (1875). In that case there was a lease of oil lands for 20 years, with a stipulation for